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10/786,706

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Paul Swenson

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EXAMINER

FIELDS, BENJAMIN S

ART UNIT

PAPER NUMBER

3684

NOTIFICATION DATE

DELIVERY MODE

08/05/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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***Advisory Action
After the Filing of an Appeal Brief***

Application No.

10/786,706

Applicant(s)

SWENSON ET AL.

Examiner

BENJAMIN S. FIELDS

Art Unit

3684

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The reply filed 16 July 2010 is acknowledged.

1. ☐ The reply filed on or after the date of filing of an appeal brief, but prior to a final decision by the Board of Patent Appeals and Interferences, will not be entered because:

a. ☐ The amendment is not limited to canceling claims (where the cancellation does not affect the scope of any other pending claims) or rewriting dependent claims into independent form (no limitation of a dependent claim can be excluded in rewriting that claim). See 37 CFR 41.33(b) and (c).

b. ☐ The affidavit or other evidence is not timely filed before the filing of an appeal brief.
See 37 CFR 41.33(d)(2).

2. ☐ The reply is not entered because it was not filed within the two month time period set forth in 37 CFR 41.39(b), 41.50(a)(2), or 41.50(b) (whichever is appropriate). Extensions of time under 37 CFR 1.136(a) are not available.

Note: This paragraph is for a reply filed in response to one of the following: (a) an examiner's answer that includes a new ground of rejection (37 CFR 41.39(a)(2)); (b) a supplemental examiner's answer written in response to a remand by the Board of Patent Appeals and Interferences for further consideration of rejection (37 CFR 41.50(a)(2)); or (c) a Board of Patent Appeals and Interferences decision that includes a new ground of rejection (37 CFR 41.50(b)).

3. ☒ The reply is entered. An explanation of the status of the claims after entry is below or attached.

4. ☒ Other: See Continuation Sheet

/Thomas Dixon/
Primary Examiner, Art Unit 3684

Claims 1-9 and 11-21 stand rejected per the Examiner. The Examiner has noted two issues with Claims 1-9 and 11-21. They are:

1 - as amended recite and seemingly represent actions which can not effectively be claimed. In particular, focus on: "... a campaign designed to educate; flags being arranged so as to stimulate an emotional response; to heighten the emotional response." The Examiner notes that such limitations per Applicants disclosure do not reasonably enable one skilled in the art to make and use the invention of the instant application. One of ordinary skill in the art would not have known how to consistently arrange flags to "stimulate an emotional response" or "heighten [an] emotional response" with fairly consistent tests/trials or results and without undue experimentation and/or guesswork. Furthermore, there is no definitive guarantee that such goal or attempt to "stimulate an emotional response" or "heighten [an] emotional response" will actually occur.

2 - "... a campaign designed to educate; flags being arranged so as to stimulate an emotional response; to heighten the emotional response." The Examiner notes that such limitations per Applicants require further additional clarification. How is it that an individual, machine, or even a process be able to arrange flags in order to "stimulate an emotional response" while at the same time "heighten [an] emotional response" as well? Further, how is it that an individual, machine, or even a process be able to "designed to educate" as set forth in the claims of the instant application?

In regards the prior art references:

Harmon does teach and suggest the funding of a charity or a group of charities. The Exhibit U and Harmon references, at least, when combined, teach or suggest all of the elements of independent Claim 1, even as amended. Specifically, the Exhibit U in combination with the Harmon reference does teach that a sponsor (buyers/sellers) initially pays for an item [flag] followed by selling the item to raise additional funds for a selected charity. The Exhibit U reference discloses a planned 30 acre national park and museum dedicated to the honor of the U.S. flag. (See page 1). The reference discloses plans for a "Field of Honor" containing over one-hundred granite memorial markers, as well as a "Flags of Freedom Monument" containing state and colonial flags located around 5 pools forming the shape of a star. Harmon, however, does teach or suggest a sponsor that initially pays for a charitable event prior to its commencement, with at least a portion of proceeds being donated to the charitable cause (Harmon: Figure 2; Page 1, Paragraphs 0004-0008; Claims 1-3). Harmon allows for an option embodiment where the reselling of an item can be for a greater price and thus can be attributed to the present invention, as recited in claim 1. Furthermore, the Examiner notes that the methods steps which have been most newly amended represent actions which can not be effectively claimed. In particular, a campaign designed to educate; flags being arranged so as to stimulate an emotional response; to heighten the emotional response.

Lastly, the Examiner notes that the currently proposed amendments of Claim 1 as submitted by the Applicants raise new issues which necessitate the undertaking of an additional search/reconsideration of any prior art. Additionally, the Examiner has attached the currently proposed amendments of the claims (mail date: 16 July 2010) and have included these claims (NOT TO BE ENTERED) as part of the record for purpose of appeal.